

**REMARKS**

***Preliminary Matters:***

Dealing with preliminary matters first, Applicants thank the Examiner for acknowledging Applicants' claim to priority and receipt of the priority document. Further, it is noted with appreciation that the Examiner has considered the references cited in the Information Disclosure Statement submitted on March 29, 2006. Finally, the Examiner has accepted the drawings filed on March 29, 2006.

***Disposition of Claims:***

Claims 1-19 and 62-78 are all the claims pending in the application. Claims 1-16, 18, 19, 62-75, 77 and 78 are withdrawn from consideration. Claims 17 and 76 are rejected.

***Claim Rejections Under 35 U.S.C. § 103:***

The Examiner has rejected claims 17 and 76 under 35 U.S.C. § 103(a) as being unpatentable over Windeyer (WO 03029845). The Examiner also makes reference to Grandone, et al. (U.S. Patent No. 5,282,149). For the following reasons, Applicants respectfully traverse this rejection.

Windeyer describes a tissue processor for processing tissue samples for histological analysis. Windeyer identifies the following problems with the prior art:

1. Only a single protocol could be run, because a centrally located closed chamber was used (page 2, lines 28-32).
2. Urgent samples could not be processed with other samples that require longer processing times (page 3, lines 4-6).

Windeyer solves this problem by having two independently operable retorts. This solution enables more than a single protocol to be run simultaneously:

The use of two retorts allows two sets of baskets to be processed either simultaneously or with an overlap. Thus one retort can be loaded and a protocol begun while the other retort is mid-way through the same or a different protocol. This provides additional flexibility in the processor. (page 14, lines 25-28)

Windeyer is wholly silent on the use of priorities for tissue protocol processing, and certainly does not teach or suggest modifying a protocol step based on priority. It addresses the aforementioned issues by using two retorts, and does not go any further. One valid method of addressing protocol conflicts, taught by Windeyer, would be to have additional retorts. The modification of a protocol step would not have been an obvious solution to processing multiple protocols, and addressing issues of urgency, especially as it involves the non-trivial step of assigning priorities to protocols.

US 5,282,149 (**Grandone**) describes a carousel-based biological sample analyzer. It is not relevant to the present invention as it does not refer to or relate to a tissue processor comprising at least two retorts selectively connected for fluid communication to least one of a plurality of reagent resources by a valve. It does not refer to retorts at all, and does not describe, teach or suggest modifying protocol steps in this context. In addition, it does not teach the allocation of a tissue processing protocol to each of two or more retorts, and teaches away from the assigning of a priority for each tissue processing protocol, as it treats a new sample run as part of the original set of samples (column 13, lines 46-58). Although column 11 lines 19-32 refers to priority sequence numbers associated with samples, read in the context of columns 9 & 10, it is clear that blocks of protocols are scheduled to maximize throughput (and protocols are

not given a priority as that term is used in the context of the present claims), and worst-case assumptions are made about protocol steps to avoid modification of protocol steps.

Accordingly, neither Windeyer nor Grandone, considered individually or permissibly combined, renders claim 17 or 76 obvious to one of ordinary skill in the art.

***Conclusion:***

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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